

April 24, 1970

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 6 (1970)

TO ALL AUTHORIZED LIFE INSURANCE COMPANIES WRITING DEBIT LIFE INSURANCE

Re: Sections 213-a and 214

Your attention is directed to recent findings by Deputy Superintendent Malcolm MacKay, in connection with a hearing on a report on examination regarding violations of Sections 213-a and 214, with respect to a provision in an agreement between the insurance company and the union representing the agents relating to the "irrevocable beneficial interest" of an agent in the transfer or sale of the "commissions" on his debit, and a violation of Section 213-a(7)(a) with respect to collection and/or service fees paid by the insurance company to general agents who do not physically collect premiums.

In his findings, Mr. MacKay stated, in part:

"On the question of the 'irrevocable beneficial interest' in the contract between the Company and the union representing the debit agent ... , I find that the attempt to create such a vested, transferable interest in said contract is a violation of Sections 213-a and 214 of the Insurance Law. These sections and Section 213 in effect distinguish among first year commissions, renewal commissions and collection fees. Collection fees by their very nature are not vestable since they are necessarily paid for actual services performed by the collecting agent at specific times. Section 214 of the Insurance Law prohibits any contract providing for compensation beyond 12 months of the date of such contract except for renewal commissions or the payment of first year commissions and additional compensation as provided in Section 213. While it is true that Section 213-a does not characterize fees for debit collections after the first year as either renewal commissions or collection fees, it is the accepted practice in the insurance industry that such payment for collections are in fact collection fees. Accordingly, it follows that whereas a debit life agent may be given a vested first year commission for the policy written, the collection fee cannot vest. Therefore, the term 'irrevocable beneficial interest' as used in the union agreement cannot apply to the collection fees.

"As to the question of collection and/or service fees paid to a general agent ... , I find that there is no justification for such payment to the general agent unless it can be shown that such general agent or his employee performs the actual collection work. There is no provision in the Insurance Law for a 'service and/or collection fee' to a general agent by reason of his status per se. Collection fees may be permissible, but by their very nature apply only to one who physically does the collecting. The Company's argument that a principal-agent relationship exists between the general agent and the collecting agent is not persuasive, since such relationship exists only for some purposes (contract liability, etc.)."

In view of the foregoing, and in the interest of fair competition among licensed insurers, it is requested that prompt steps be taken, where necessary, to revise contracts affecting agents and general agents to conform with the above quoted findings.

Kindly acknowledge receipt of this letter to Mr. I. Murray Krowitz, Chief of the Life Bureau.

Very truly yours,

[SIGNATURE]

RICHARD E. STEWART

Superintendent of Insurance